IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13125 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VIMAL CHHAGANBHAI KOLI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL, for the Petitioner

MR H.L.JANI, A.G.P., for Respondent Nos. 1, 2, 3

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/06/2001

ORAL JUDGEMENT

Heard Ld.Advocate Ms.Subhadra G. Patel on behalf of the petitioner and Ld.A.G.P., Mr.H.L.Jani appearing on behalf of the respondents.

2. In the present petition, the petitioner has challenged the detention order dated 6th November, 2000 passed by the Police Commissioner, Rajkot City under the provisions of Prevention of Anti-Social Activities Act ('the PASA' for short). The detention order has been passed under the provision of Section 3(1) of the PASA Act. The grounds of detention has been communicated and supplied under Section 9(1) of the PASA Act, to the present petitioner on 6th November, 2000. The detaining authority has claimed the privilege under Section 9(2) of the PASA Act. According to the grounds of detention, in all, three offences were registered against the present petitioner under Section 454,457,380, 379 and 114 of I.P.C. The first offence was registered on 14th September, 2000, the second offence was registered on 3rd October, 2000 and the third offence was registered on 5th October, 2000. There were two unregistered offences dated 8th July, 2000 and 10th September, 2000, as per the statement of secret witnesses dated 3rd November, 2000. The statements of secret witnesses were recorded on 3rd November, 2000 and the same have been verified by the detaining authority on 4th November, 2000. The petitioner was considered to be a "dangerous person" under Section 2(c) of the PASA Act. The respondent-State of Gujarat has not filed any reply against the present petitioner.

3. In light of above facts which are undisputed and on record, Ld.Advocate Ms.Subhadra Patel has submitted that in the petition, the petitioner has raised various contentions challenging the detention order but according to her, one or two contentions are enough to vitiate the order of detention. Therefore, the first contention raised by Ld.Advocate Ms.Patel is that considering the fact that the last offence was registered dated 5th October, 2000 and the detention order has been passed on 6th November, 2000. Therefore, there was one month delay in passing the detention order and in between there was no offence registered or unregistered against the present petitioner. The said delay has not been explained by the respondent-State, and therefore, according to her submission, the present order of detention is required to be set aside. She relied upon the decision of this Court, reported in 1997(1) GLH 381.

4. The second contention which has been raised by the Ld. Advocate Ms.Patel is that in the representation

dated 18th December, 2000 which is on record. In that representation the petitioner has requested the concerned authority to supply the statements of witnesses which were recorded under the provisions of Section 161 of Criminal Procedure Code. According to her, in spite of demand, no copies of the statements had been supplied to the present petitioner, and therefore, it adversely affects the legal right of the present petitioner to have effective representation under Art.22(5) of the Constitution of India.

5. In support of this contention, she relied upon the decision of this Court, reported in 2000 (2) GLH 540.

6. Ld.A.G.P. Mr.Jani appearing on behalf of the respondent-State has submitted that one month delay from the date of the last registered offence cannot be considered as inordinate delay and, therefore, there is no need to explain such delay when the detaining authority is considering and observing the activities of the present petitioner. In reply to the second contention Mr.Jani has submitted that in response to the representation dated 18th December, 2000, the Respondent-State has given reply to the detenue on 21st December, 2000 and pointed out to the detenue that whatever the materials or statements or documents had been taken into account by the detaining authority while passing the detention order, the same have been supplied to the detenue and, therefore, there was no need to again supply the same documents to the detenue. Therefore, Ld.A.G.P. Mr.Jani submitted that unless and until a specific request is made by the petitioner that he wants certain documents, then the detaining authority may consider to supply the same but in absence of detail, the respondent State is not able to find out which statement the petitioner required. Therefore, according to Ld.A.G.P. Mr.Jani, whatever the materials have been considered, the same have been supplied and merely referred to in the grounds of detention. There is no need to supply the documents. Therefore, Mr.Jani, Ld. A.G.P. submitted that order of detention is legal and valid and no legal rights have been adversely affected or violated by the respondent-State. Looking to the facts and material on record the order of detention is quite legal and justified which does not require any interference by this Court.

7. I have heard Ld.Advocates appearing for the respective parties. In respect of the first contention raised by Ld.Advocate Ms.Subhadra G.Patel, there was one month delay in passing the detention order from the date

of the last offence registered against the petitioner. This delay remained unexplained and there was no proximate or having any direct nexus which requires to pass impugned order of detention. Therefore, the view taken by this Court in reported decision in case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381. The relevant paragraph 21 are as under :

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenue was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

8. In respect of the second contention, the demand has been made by the petitioner in his representation dated 8th December, 2000 to supply the statements which were recorded by the concerned Police Authority under the relevant provisions of Section 161 of Cr.P.C. No doubt, the petitioner has not specifically asked or demanded statements of witnesses by supplying the name but he requested to supply statements which were recorded under the provision of Section 161 of Cr.P.C. In the grounds of detention, the detaining authority has considered

three offences registered against the present petitioner and all the relevant papers attached to the offences as per paragraph four of the grounds of detention. The detaining authority has also considered the statements of witnesses attached to the charg-sheet, but the same have not been supplied to the petitioner. The reply dated 21st December, 2000 is vague and denying the legal right to the petitioner. The total papers which have been supplied to the petitioner in which some of the statements were supplied in respect to the charge-sheet but some of the statements were not supplied. Why the same have not been supplied ? There was no reply filed by the State. Therefore, looking to the grounds of detention, more particularly Paragraphs 4 and 5, according to my opinion, when the detaining authority has considered and relied upon the statements of witnesses which are recorded under Section 161 of Cr.P.C. alongwith the charge-sheet papers, then it is duty of the detaining authority to supply the same materials to the petitioner. Non-supply of the same material which was considered by the detaining authority will definitely adversely affect the right of effective representation of the petitioner under Art.22(5) of the Constitution of India. It is not necessary for the petitioner that non-supply of such documents caused prejudice to him but on the contrary it is a duty of the detaining authority to see whatever the material has been taken into account, the same is required to be supplied otherwise it amounts to denying the legal and fundamental rights of the petitioner to have effective representation under Art.22(5) of the Constitution of India. The same view is taken by this Court in case of Koli Sureshbhai Balabhai Parmar Vs. District Magistrate, Bhavanagar and Ors., reported in 2000 (2) GLH 540. The relevant observations after considering the decision of the apex Court in Paragraphs 12 and 13 are as under :

"12. Thus the correct legal position, which emerges from the aforesaid decisions is as under :

(i) Failure to furnish the copies of the documents to which only a reference or a casual or passing reference was made in the grounds of detention is not an infringement of Article 22(5), fatal to the order of detention.

(ii) While a distinction has to be maintained between a document which has been relied upon by the detaining

authority in the grounds of detention and a document which finds a mere reference in the grounds of detention, non-supply of the copy of the documents relied upon in the grounds of detention is fatal to continue the detention and in such cases the detenue need not to show that any prejudice is caused to him. Non-supply of such a document would amount to denial of right of being communicated the grounds and of making an effective representation against the order.

(iii) When the detenue was already on bail at the time when the detention order was passed, the detaining authority has to necessarily rely upon the bail application and the order granting bail as that would be a vital ground for ordering the detention and in such cases the copies should also be supplied to the detenue.

(iv) What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenue, should the document be in a different language.

13. Such being the position of law on the basis of the Supreme Court decisions, as aforesaid, this Court finds that in the facts of the present case non-supply of the translation of the bail order and the conditions of bail at pages Nos.13 to 19 and 22, i.e. non-supply of the documents, which were vital to the grounds of detention, has affected the petitioner's right under Article 22(5) of the Constitution of India. This Special Civil Application, therefore, deserves to be allowed on this ground alone and, therefore, it is not necessary for me to consider the other grounds on which the detention order has been sought to be assailed."

9. In light of the observations made by this Court in two decisions and considering the facts that there was one month delay in passing the detention order from the

last offence registered on 5th October, 2000 which remained unexplained and non-supply of the relevant documents which had been taken into account by the detaining authority while passing the detention order and in spite of the demand made by the petitioner, the same have not been supplied and therefore, it adversely affected the legal and fundamental rights of the detenue for making effective representation under Art.22(5) of the Constitution of India. Therefore, the order of detention dated 6th November, 2000 is required to be set aside.

10. In result, the present petition is allowed. The order of detention dated 6th November, 2000 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The present petitioner-detenue Shri Vimal Chhaganbhai Koli detained in Baroda Jail is ordered to be released immediately, if he is not required in any other case. Rule is made absolute. No order as to costs.

(H.K.Rathod, J)
'Bhavesh'